IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2252 OF 2004

Babanrao Tukaram Ranjane,
aged about 60, residing at Bhandup,
Mumbai, presently
lodged in
Yerawada Central Prison,
Pune .. Applicant.

Vs

1. The State of Maharashtra,
through the Central Bureau of
Investigation, ... Respondent

Mr.P.M.Pradhan, for the applicant.

Mr. Lalit Chari, Senior Advocate with Mr R.B.Thakare and Mr A.M.Chimalkar, for the respondents.

Mr V.B.Konde-Deshmukh, APP for respondent -State.

CORAM : D.B.BHOSALE,J.
DATE : 3rd SEPTEMBER, 2004

JUDGMENT:

1. The applicant has approached this Court under section 439 of the Code of Criminal Procedure (for short, "the Code"), for being released on bail in C.R.No.135 of 2002 registered at Bund Garden Police Station, Pune. The crime has been registered under the various provisions of Indian Penal Code and sections 3(2)(5) and 24 of the Maharashtra Control of Organised Crime Act, 1999 (for short,

"MCOCA"). The application filed by the applicant seeking bail under section 21(4)(b) of MCOCA was rejected by the learned Special Judge (Under MCOCA), Pune, by order dated 10.3.2004.

2. The crime was initially registered by Bund Garden Police Station on 7.6.2002 against three accused. As the investigation progressed, the investigating agency kept on roping in several persons as accused, consisting of Politicians, Government Officials, I.P.S. Officers, Police Officers, Advocates etc, and, as of today, about 65 accused have been shown arrested in the said crime. The applicant is arraigned as accused no.62 in the said crime. The provisions of MCOCA were invoked by the investigating agencies on 3.9.2002. The applicant came to be arrested on 8.12.2003. He was in police custody till 16.12.2003. The chargesheet against the applicant was filed on 3.2.2004.

3. The factual matrix, that would be relevant and material in so far as the applicant is concerned, in brief, is as follows.

(a) The applicant joined the Stamp Office of

the Government of Maharashtra as a Clerk in 1964. At the time of his retirement on 28.2.2002, he was holding the post of Deputy Superintendent of Stamps.

(b) In the third supplementary chargesheet, paragraphs 42-45 pertain to the applicant. In these four paragraphs, the allegations against the applicant mainly make reference to three incidents.

(i) Paragraph 42 reveals that the applicant was aware of the activities of the kingpin Abdul Karim Ladsa Telgi since December, 1998. The applicant and one Subhash Hajare, the then Superintendent of Stamps, Mumbai, had visited Crime Branch, Dharavi Unit-5, Mumbai (for short "Crime Branch, Dharavi") on 25.12.1998 for examining the seized counterfeit government stamps issued by Government licensed Stamp Vendor -Madhav M.D. Name of Madhav M.D. was clearly appearing on all the stamp papers examined by the applicant. They were also made aware that an offence had been registered against Madhav M.D and some others vide C.R.No.78/98 by Crime Branch, Dharavi. The applicant, after examining the seized government stamps, found them to be counterfeit and, therefore, advised to send

them to Government Security Press. It further reveals that on the very day, Hajare had specifically directed the applicant to stop supply of stamps to Madhav M.D and take appropriate action against him. The supply of stamps was, accordingly ,stopped by the applicant from 2.1.1999, however, no other action was taken against Madhav M.D., who had close associations with the organised crime syndicate of Telgi.

(ii) The paragraph 43 of the chargesheet reveals that on 24.4.2000, New India Assurance Company (for short, "Assurance Company") sought an opinion of the applicant as to the genuineness of the stamps of Rs.1,87,262/- sold by Madhav M.D. The stamps were sent with Manohar Agawane, an employee of the Assurance company along with a request letter, zerox copies of challan and cash memo of the stamp vendor. Though the applicant knew that the stamps were fake, challan was forged, he retained only the request letter and returned the stamps, challan and cash memo and further delayed the action against Madhav M.D. till 2.5.2000. Resultantly, the counterfeit stamps were collected by Madhav M.D.

from the Assurance Company. This conduct of the applicant, according to the CBI, clearly demonstrates that he rendered help and support in commission of the organised crime and facilitated the commission of continuing unlawful activities of the organised crime syndicate of Telgi.

(iii) Sometime in July, 2001, one S.M.Daruwalla claimed refund of non-judicial stamps of Rs.100/- and 20/- which had remained unutilised. Those stamps were issued by Sanjay Sharma. Having found that those stamps were not issued to stamp vendor Sanjay Sharma, the applicant failed to initiate legal action in the matter knowing fully well that Sanjay Sharma was a member of the organised crime syndicate of Telgi.

(c) In short, the allegations against the applicant are that it was basically his responsibility to release stock as per the indents received from the licensed government stamp vendors and as such he had knowledge about the quantity and denominations of the stamps and stamp papers released to the vendors and, therefore,

whenever a query about genuineness or otherwise of any stamp or stamp papers was received, the applicant was immediately called and asked to verify the same. He was aware about the associations of Madhav M.D and Sanjay Sharma with Telgi and his syndicate. The applicant did not take action against them despite specific directions from his Superiors. It is also alleged that whenever any complaint as regards counterfeit government stamps or stamp papers sold by a firm having links with the organised crime syndicate of Telgi was received, no action whatsoever used to be initiated by the applicant. It is further alleged that the house of the applicant was searched by the investigating team on 8.12.2003 in which the official records were found in his house after his retirement having connection with the organised crime syndicate of Telgi.

4. I heard Mr.P.M.Pradhan, learned Counsel, for the applicant, Mr.Lalit Chari, learned Senior Counsel, for the respondent-CBI and Mr V.B.Konde-Deshmukh, learned Addl.Public Prosecutor for the respondent-State, at length and with their

assistance perused the entire material placed before me.

5. The contentions urged by Mr.Pradhan, learned counsel for the applicant, were two-fold. Firstly, on facts to which I would like to make reference while dealing with his submissions to avoid repetition and, secondly, as to whether an officer inferior in rank to the Addl. Commissioner of Police can sit in appeal over the judgment and grant approval, as contemplated in the provisions of section 23(1)(a) of MCOCA, and whether such approval could be said to be legal and valid if it was earlier refused by the Jt. Commissioner of Police, Pune, who had granted approval in respect of only two accused persons involved in the crime. He further submitted that Mr Jaiswal, Deputy Inspector General of Police, who was appointed by the Home Department as in-charge of Special Investigation Team (for short, "SIT"), whose position was not less than the investigating officer, whether was competent to grant approval as contemplated in section 23(1)(a). In short, according to Mr Pradhan, approval granted by Jaiswal was totally

illegal and, therefore, the entire prosecution is vitiated and the applicant is entitled for bail. In support of his submission, he placed heavy reliance upon the judgment of the Apex Court in **Anirudhsinhji Karansinhji Jadeja Vs. State of Gujarat, 1995 (5) Supreme Court Cases 302.** Mr.Pradhan also placed reliance upon the judgment of the Apex Court in **Shaheen Welfare Association Vs. Union of India and ors, (1996) 3 Supreme Court Cases 616** and contended that the applicant falls in the class of the accused who is roped in, not because of any activity directly attracting the provisions of MCOCA but by virtue of section 120-B of IPC and, therefore, he is entitled to be enlarged on bail. Further, reliance was placed on the judgment of the Apex Court in **Kalpanath Rai Vs State through CBI, AIR 1998 Supreme Court 201** to contend that mens rea is an essential ingredient for the offence envisaged under section 3(2) of MCOCA and if that is absent the accused is entitled to be released on bail. In the instant case, according to Mr Pradhan, from the material relied upon by the prosecution, the applicant cannot be said to have had knowledge about the activities of the organised crime syndicate of Telgi and,

therefore, he is entitled for bail. To buttress this contention, he placed reliance upon the judgment of the Apex Court in **State of Orissa Vs. K.Rajeshwar Rai, AIR 1992 SC 240**.

6. On the other hand, Mr Chari, learned counsel for the respondent-CBI, submitted that in the instant case, the approval as contemplated in section 23(1) of MCOCA was, in fact, not necessary in view of the fact that the first information report in C.R.No.135 of 2002 was lodged on 7.6.2002, i.e. much prior to invocation of the provisions of MCOCA. He further submitted that even if it is assumed that such approval was necessary, it was granted by Jaiswal, Dy.Inspector General of Police, and that he was competent to grant the approval. Merely because he was heading the Special Investigation Team, it cannot be said that in the instant case he was acting as an investigating officer. The approval granted by him under section 23(1)(a) of MCOCA, in any case, cannot be said to be illegal and, therefore, the question of entire prosecution being vitiated does not arise. The submissions of the learned counsel for the CBI, on

facts, would be dealt with while considering the merits of the case at an appropriate stage.

7. Section 23 of MCOCA deals with cognizance of, and investigation into, an offence under the provisions of MCOCA. It reads thus :

> "23. Cognizance of, and investigation into, an offence - (1) Notwithstanding anything contained in the Code-
>
> (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
>
> (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police,
>
> (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the

police officer not below the rank of Additional Director General of Police."

A close look at the section makes it clear that it deals with recording of "information" about the commission of an offence of organised crime under the MCOCA, which shall not be recorded by a police officer without prior approval of the police officer not below the rank of Dy.Inspector General of Police. The expression "information" in clause (a) of Sub-section (1) of Section 23 means "First Information Report" of an offence of "Organised Crime" under MCOCA. It provides that if the police officer desires to record first "information" report about the commission of an offence of the organised crime under MCOCA, he cannot do so without prior approval of the police officer not below the rank of Dy.Inspector General of Police. However, such approval would not be necessary in a case where the first information report has been recorded by a police officer before invocation of the provisions of MCOCA. In other words, the offence, which is registered under the provisions of IPC and during investigation the investigating officer seeks to invoke the provisions of

MCOCA, the approval under section 23(1)(a) would not be necessary. In the instant case, the FIR was lodged on 7.6.2002 and the crime was registered by Band Garden Police Station under the various sections of IPC and the Bombay Stamps Act bearing C.R.No.135 of 2002. At that stage, it did not contain any charge of an offence under MCOCA. In the chargesheet filed on 3.9.2002, the offences charged with were not under MCOCA but under IPC and other Acts. The provisions of MCOCA were invoked in December, 2002. Keeping that in view, I am of the considered opinion that the approval, as contemplated under section 23(1)(a), was not necessary in the instant case. In so far as compliance of sub-section (2) of section 23 is concerned, there does not seem to be any dispute over that. It is also not disputed that the investigating officer is not competent as required under section 23(1)(b) to investigate the instant crime. In the circumstances, the submission of Mr Pradhan must be rejected.

(a) Even if it is assumed that the approval was necessary, the police officer, i.e.Jaiswal, who granted the approval, was otherwise competent to grant such approval. Merely because he was heading SIT does not mean he was investigating officer within the meaning of

section 3(1)(b). in the circumstances, the Judgment relied upon by Mr Pradhan in Anirudhsinhji Karansinhji Jadeja (supra) would not help the applicant in support of his contention that the provisions of section 23(1)(a) of MCOCA are not complied with and, therefore, the trial itself is vitiated.

8. Before I proceed further, it is useful to make reference to the judgment of this Court rendered in Criminal Application No.572 of 2004, filed by R.S.Sharma Vs. State of Maharashtra, one of the accused persons in the instant crime seeking bail under section 439 of the Code. Paragraphs 34 and 36 of the judgment dated 16.7.2004, held thus:

> "... ... .. even if an accused, who is charged for the offence under section 3(2), is not a conspirator as urged, still he could be held guilty under that provision provided acts and omissions of such person are sufficient enough to prima facie hold that they are committed to facilitate the commission of an organised crime. In other words, if any

individual and more particularly a public servant aware of the existence of a conspiracy and of its aims and objectives goes out of his way, does something untoward and not part of his legal obligations in order to assist the functioning of a conspiracy, one may have to presume, at the stage of considering the bail application, that he is a part of such activity so as to attract the provisions of section 3(2) read with section 2(1) of MCOCA.. ...". "... ... The provisions of sub-section (2) of section 3 of MCOCA clearly show that an accused, who "knowingly facilitates the commission of an organised crime" is also liable for punishment under this provision. ... .."

"36. .. .. The acts charged here relate not only to the printing of counterfeit stamps and stamp papers, they relate to dealing in and selling such counterfeit stamps and stamp

papers; they relate to the setting up of an elaborate marketing machinery for that purpose; they relate to what can properly be described as a setting up of a business organised for the purpose and they relate perhaps to the most important activity of such syndicate the "laundering" of the proceeds so that they appear to have been gains of legitimate business activity. Similarly, it would not be possible to accept that after the arrest of 65 accused, the criminal activity has come to a halt. The activity of the organised crime continued and is continuing and as a matter of fact some instances have taken place or continued even after the arrest of Telgi or while he was in police custody. It is very important to bear in mind that the investigation is by no means over. The fact that the investigation is not over is bast established by the order of the Apex Court dated 15.3.04 by which the

> Apex Court has directed that the investigation in fake stamp case be taken over by the CBI. It is from this point of view, it is clear that we are dealing with an on-going investigation into the on-going activity of an organised crime syndicate that still exists in respect of which it is not unreasonable to accept that new fields will come to light and perhaps some other accused as well."

9. Though at the stage of considering the prayer for bail, a detailed examination of evidence and elaborate documentation on merits of the case need not be undertaken, only with a view to indicate reasonable grounds why bail is being granted or refused, I went through the documents with the assistance of the learned counsel for the parties. In so far as the first charge, as reflected in paragraph 42 of the chargesheet is concerned, the learned counsel appearing for the parties took me through the statement of Shri Hajare, the then Superintendent of Stamps and some other documents, such as, the letter written by the applicant dated 8.9.2000

addressed to Sion Police Station, impression of rubber stamps of Madhav M.D., cash memos of Madhav M.D. etc.

(a) Mr Pradhan, learned counsel for the applicant, submitted that the applicant had not visited Crime Branch, Dharvi, of his own accord but at the instance of Hajare, since he wanted to take the applicant's opinion as to whether the stamps were genuine or fake. He was in the police station for half an hour. He was shown non-judicial stamp papers and other stamps of small size and after examining he expressed doubt about the genuineness of those stamps and advised the investigating officer to send the stamps to India Security Press. The applicant also stopped the supply of stamps to Madhav M.D., stamp vendor as per the directions of Hajare. In view of this, Mr Pradhan submitted that by no stretch of imagination it could be said that the applicant rendered help or support in the commission of organised crime and/or knowingly facilitated the commission of the organised crime Syndicate of Telgi. I perused the statement of Hajare. It is clear from his statement that both, i.e. the applicant and Hajare had gone to Crime Branch, Dharavi on 17.12.98 and after examining the stamp papers shown

to them, they informed the investigating officer that those stamps were counterfeit and also advised to send them to India Security Press. Further, Hajare directed the applicant to stop supply of stamps to Madhav M.D. forthwith and take immediate action against him. A perusal of the letter dated 8.9.2002, bearing no.Store/3851 signed by the Superintendent of Stamps and addressed to Sion Police Station, shows that the supply of stamp to Madhav M.D was stopped on 24.12.1998 and that he surrendered his stamp vending licence on 18.12.2000. Hajare in his statement dated 26.11.2003 categorically stated that on the very day on which the applicant and Hajare had gone to Crime Branch,Dharavi had given instructions to the applicant to stop supply of stamps to Madhav M.D. and take an immediate action against him. This all happened on 17.12.1998 The action of withholding supply of stamps to Madhav M.D. was taken on 24.12.98. No other action, whatsoever, was taken against Mahdav M.D by the applicant. From record I did not find any reason or justification as to why action of either suspending the licence or cancelling the licence against Madhav M.D was not taken till June, 1999. This conduct of the applicant, if seen in isolation, it may not amount to rendering help and

support or facilitating the commission of the organised crime. However, it is abundantly clear that the applicant atleast on 17.12.98, the date on which he was called at Crime Branch,Dharavi, came to know about the activities of the organised crime syndicate of Telgi and that Madhav M.D. is its member.

10. At this juncture it would be useful to make reference to one of the submissions advanced by the learned counsel for the CBI in reply to the submission of Mr.Pradhan, Learned Counsel for the applicant, that the applicant had no power whatsoever to conduct raid or to take any action on receipt of any complaint of counterfeit government stamps or stamp papers. It was submitted that a complaint was received from ABN Amro Bank regarding counterfeit government stamps and stamp papers which were forwarded to the applicant for action. The rubberstamp on those stamp papers was of the licensed government stamp vendor by name Shinde, not having any links with the syndicate of Telgi. The applicant had taken immediate action in respect of the said complaint by carrying out the raid and even going to the extent of suspending his licence. The documents at pages 12610 and 12611 of the chargesheet clearly show

that the complaint of ABN Amro Bank was received on 4.6.2001 and the action was taken on 7.6.2001 against the said Shinde. It is very interesting to note that the report of India Security Press in respect of the stamps received form ABN Amro Bank shows that those stamps were genuine. It is thus clear that the applicant had sufficient powers to take drastic action and that he could have taken such action against Madhav M.D. This omission or inaction on the part of the applicant allowed Madhav M.D. to continue his unlawful activities even after supply of stamps was withhold which is clear from further developments. Madhav M.D. used his licence for selling counterfeit stamps.

11. In so far as the charge as reflected in paragraph 43 of the chargesheet is concerned, it pertains to purchase of the stamps by the Assurance Company. There does not seem to be any dispute that the stamps of Rs.1,87,262 were sold by Madhav M.D on 8.4.2000 to the Assurance Company. The Assistant Manager of the Assurance Company raised suspicion on the genuineness of those stamps. He sent those stamps with his forwarding letter dated 24.4.2000 to the Stamp Office, Mumbai through Manohar Agawane. That letter was addressed to

the Stamp Department, Government of Maharashtra. It was placed before the then Superintendent of Stamps, Mr Kulkarni, who made an endorsement on the said letter requiring the applicant to examine the stamps and submit his report. The said endorsement was made by Kulkarni on 25.4.00. Alongwith the letter dated 24.4.2000, zerox copies of the cash memo of Madhav M.D., the challan showing payment made to the Government by Madhav M.D. and the original stamps were sent for examination. A perusal of the statements of K.G.Thakkar, Kulkarni-Superintendent of Stamps, and in particular Manohar Agawane, reveal that the stamps, cash memo and challan were examined by the applicant and he found that the said stamps had not been issued by the Stamp Office, Mumbai and the said challan was forged. He also found that the stamp vending licence of Madhav M.D. was cancelled in June, 1999. Despite this, the applicant did not seize the stamp papers, challan and cash-memo issued by Madhav M.D to the Assurance Company. As a part of his duty, he ought to have taken charge of the stamps forthwith and in any case should not have returned the stamp papers, challan and cash memo to Agawane and retained only the covering letter dated 24.4.2000 signed by Thakkar. I am at a loss to

understand as to why the applicant did not take prompt action and instead returned the counterfeit stamp papers to Agawane. Agawane has categorically stated that the applicant did not accept the stamp papers. This conduct of the applicant, against a backdrop of the fact that Madhav M.D. was not holding a valid licence as on that date and knowing fully well that he was indulging in sale of counterfeit stamps, clearly support the prosecution case that the applicant's conduct amounts to rendering help and support in commission of the organised crime by Telgi's Syndicate and knowingly facilitated its unlawful activities. He was armed with sufficient powers to take drastic action against Madhav M.D. Initially he had that opportunity when he was directed by Hajare in December, 1998 and thereafter on 25.4.2000 when the stamps sold to Assurance Company by Madhav M.D. were shown to him. By this time, the applicant was having full knowledge that Madhav M.D. was a member of the organised crime syndicate. As a result of the delayed action on the part of the applicant, the counterfeit stamp papers were taken away by unidentifed representative of Madhav M.D.on 2.5.2000. Mr.Pradhan, learned counsel for the applicant, took me through several documents to justify the conduct of the

applicant saying that he did take prompt action against Madhav M.D. He also endeavoured to explain delay of every day till 2.5.2000. However, there was no explanation as to why the applicant returned the stamp papers to Agawane after finding that they were fake and that they were issued by Madhav M.D. whose adverse antecedents were within his knowledge. The explanation offered by Mr Pradhan that Agawane did not keep the stamp papers and took them away, is not probable and acceptable at this stage. The applicant had sufficient powers to take immediate charge of the said stamp papers. The lapse on the part of the applicant cannot be termed innocent. This will have to be viewed in the context of the fact that the applicant was well aware that the licence of Madhav M.D.had already been cancelled and the stamps brought by Agawane for verification had not been released to Madhav M.D.from the stores by the applicant. This undoubtedly supports the case of the prosecution that whenever any complaint as regards counterfeit government stamps and stamp papers sold by a firm, having links with the organised crime syndicate of Telgi was received, no action whatsoever used to be initiated by the applicant. Looking at this incident from any angle, I did not find

any justification for not taking charge of the stamps and for returning them to Agawane. In any case, this charge, against a backdrop of Dharavi incident, satisfied me at this stage to hold that there exit reasonable grounds for believing that the applicant is guilty of such offence.

12. Coming to the charge as reflected in paragraph 44 which pertains to refund of the non-judicial stamps of Rs.100 and 20/- purchased from stamp vendor Sanjay Sharma tendered by S.M.Daruwalla on the ground that those stamps remained unutilised. True it is that the applicant raised objection for refund on the ground that those stamps were counterfeit stamps and several complaints against Sanjay Sharma had been received indulging in sale of counterfeit stamps. It is a matter of record that except making the endorsement on 16.8.2001, he did not take any further action against Sanjay Sharma. The applicant also failed to forward those stamps to India Security Press.

13. At this stage, reference to the statement of Subhash Lakhe, former Superintendent of Stamps, General Stamps Office, would be useful. He stated that the

applicant was working under him and was allotted duties of stores and sales branch. According to Mr Lakhe, the applicant was responsible for indenting and procurement of the stamps from India Security Press, Nasik, receipts stores, storage of stamps, sale of stamps, follow up of verification of the stamps referred by the departments/ other offices and private persons, overall supervision of store branch, periodic checking of the vendors, issuance of the stock to the licenced stamp vendor and also to look into and verify the complaints received against the licensed vendors and any other work entrusted to him by the Superintendent of Stamps. He has further stated that Ranjane was also looking after the supervision of sales and stamp papers made through various windows/counters of the General Stamp Office. While explaining the procedure in case of finding counterfeit stamps, he stated that whenever a complaint regarding genuineness of stamps is received, it is a duty of Deputy Superintendent of Stamps (Stores), i.e. the post which the applicant was holding at the relevant time, to check whether the stock is brought from the authorised stamp vendors, whether the receipt issued from the Stamp Office is genuine and prima facie whether the stamp papers are genuine by tallying with the office

record. In case of any doubt, the Deputy Superintendent (Stores) is expected to lodge a complaint to the police station for further investigation. According to Mr Lakhe, it is also incumbent upon him to take immediate possession of stamps referred to by individual for confirmation regarding its genuineness or otherwise. At this stage, I do not find any reason to discard the statement of Mr Lakhe who absolutely had no reason to mislead the investigation. In the face of this statement, it would not be possible to accept the submission of Mr Pradhan that it was not within the powers of the applicant to take action against the erring stamp vendors. According to Mr Pradhan, Stamp Manual indicates the duties of Deputy Superintendent of Stamps (Stores) which does not include of dealing with the matters about refund or taking action in case of finding counterfeit stamps and lodge complaint with the police. It would not be possible to accept the submission in the face of material produced before me. The statements of the witnesses on record clearly establish that Madhav M.D. and Sanjay Sharma were carrying on business for long time and they were indulging in sale of the counterfeit stamps. It is also interesting to note at this stage that after retirement

of the applicant, several documents were recovered from his residential search relating to the organised crime syndicate of Telgi including papers relating to initial licence issued to Telgi. My attention was also invited to one letter dated 8.9.2000 which bears an endorsement of the applicant by which he had made a complaint to Sion Police Station about Madhav M.D.'s activities, though there was sufficient material on record to show that Madhav M.D. was conducting illegal activities from his address at Andheri. This, according to the prosecution, was done with a view to mislead the police. In my opinion, the instances relied upon by the prosecution and a scrutiny of the documents in support of the charges, show that there do not exist reasonable grounds for believing that the applicant is not guilty of the offence under the provisions of MCOCA. The material placed on record show that the applicant rendered help and support to organised crime syndicate and knowingly facilitated the commission of organised crime.

14. The submission of Mr Pradhan, that in order to bring the accused within the four corners of section 3(2)(5), the prosecution is required to establish that

the accused is a member of an organised crime syndicate as defined in section 2(1)(e) cannot be accepted. From bare reading of Sections 3(2) and 24, it is clear that even without being a member of the organised crime, one could be held liable for punishment under section 3(2) if he knowingly facilitates the commission of an organised crime. Such person, even need not be a conspirator or abetter. Similarly, under section 24 of MCOCA, a public servant could be held liable for punishment if he renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2 whether before or after the commission of any offence by a member of an organised crime syndicate. As discussed earlier, there is sufficient material to hold that such help and support was rendered by the applicant by allowing Madhav M.D. and Sanjay Sharma to continue their unlawful activities. The judgments in State of Orissa Vs K.Rajeshwar Rao (supra) and Kalpnath Rai Vs. State (supra) would not help the applicant, inasmuch as the material placed before me is not sufficient to hold that the applicant had no knowledge of the activities of the organised crime syndicate of Telgi and, therefore, there was no mens rea in committing the alleged offence.

15. In so far as the judgment in Shaheen Welfare Association Vs Union of India (supra) which was heavily relied upon by Mr Pradhan is concerned, in my opinion, that would also not help the applicant at this stage of the proceedings. The argument of Mr Pradhan that case of each individual accused should be viewed in the light of the observations of the Apex Court in the said case. The Apex court in Shaheen Welfare Association case (supra) was dealing with the case of offences charged under TADA where it was not possible to expedite the criminal trial. The principle laid down is that when bail is severely restricted by legal provisions, it becomes necessary that the trial does proceed and conclude within a reasonable time. Where this is not practicable, release on bail may be ordered. The Apex Court, in that case, classified undertrial prisoners in the following classes: (a) hardcore undertrial, (b) the undertrial whose overt acts directly attracts applicability of the provisions of the Act;(c) undertrial who is roped in by virtue of section 120-B, and (d) those who are found in possession of incriminating articles. Applying the same classification in the present case, it becomes obvious

that the present applicant is one to whom sections 3(2) and 24 applies directly. He would fall within second group of undertrials mentioned above. The said judgment of the Apex Court at paragraph 14 has recommended that in such case if the undertrial is in prison for five years or more and his trial is not likely to be concluded within the next six months, then he may be released on bail. In view thereof, in my opinion, dictum of the Apex Court in Shaheen Welfare Association case would not help the applicant in getting off on bail at this juncture.

16. In the result, no case for bail is made out. The application for bail is rejected. While passing this order, I shall not be understood to have made any observations on merits of the case. The Special Court shall deal with the case uninfluenced by the observations made in this judgment and dispose of the trial expeditiously in accordance with law.

. An authenticated copy of this order may be made available to the parties.

(D.B.Bhosale,J.)

wp-ranjane

HIGH COURT
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.2252 OF 2004

Date of Judgment:

3rd September, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?

FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.2252 OF 2004
Babanrao Tukaram Ranjane Vs. The State & ors.

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.P.M.Pradhan, for the applicant.

Mr. Lalit Chari, Senior Advocate with Mr R.B.Thakare and Mr A.M.Chimalkar, for the respondents.

Mr V.B.Konde-Deshmukh, APP for respondent -State.

CORAM: D.B.BHOSALE, J.
DATED: 3rd September, 2004.

P.C.:

For the reasons recorded in the accompanying judgment, the Court passes the following operative order :

. " In the result, no case for bail is made out. The application for bail is rejected. While passing this order, I shall not be understood to have made any observations on merits of the case. The Special Court shall deal with the case uninfluenced by the observations made in this judgment and dispose of the trial expeditiously in accordance with law."

Dt: 14.9.04

(D.B.BHOSALE,J.)